

# Coronavirus and the Building Workplace: *Are You Prepared? Part 5*

Tuesday, April 7, 2020

Proskauer»

**BOMA**  
New York

**REBNY**<sup>®</sup>

**RAB**  
REALTY ADVISORY BOARD  
ON LABOR RELATIONS

# Agenda

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1. Federal and State Legislation and Executive Orders
  - Federal Stimulus Legislation (The “CARES” Act)
  - Federal and State Leave Legislation
  - Stay-at-Home Orders
  - Associated Regulations and Guidance
2. RAB/32BJ Agreements
  - **New:** RAB/32BJ Understanding: Payout of 2020 Vacation in the Event of a Layoff
3. Common Questions Regarding Coronavirus and the Building Workplace
4. Additional Resources
5. Participant Questions



# Federal and State Legislation and Executive Orders

# Federal Stimulus Package (The “CARES” Act)

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- **Paycheck Protection Program.**

- Small businesses (not more than 500 employees) struggling due to the Coronavirus outbreak can borrow money for certain payroll costs (e.g., benefits, taxes, separation).

- **Loan Forgiveness Program.**

- Loan forgiveness is available for the amount spent in the eight-week period after the origination date on employee compensation under \$100,000, among other costs.
- The amount forgiven will be reduced in proportion to any reduction in staffing or reduction pay beyond 25%.

- **Payroll Tax Deferment.**

- Employers can delay payment of payroll taxes (the 6.2% collected by the SSA), which must be repaid equally in 2021 and 2022.

# Federal Stimulus Package (The “CARES” Act) (cont’d)

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- **Coronavirus Economic Stabilization Act.**

- Low interest loans are available to businesses with 500-10,000 employees, with no repayment required for at least six months.
- Conditions: (1) must retain at least 90% of workforce, (2) cannot outsource or offshore jobs, (3) cannot abrogate existing CBAs, and (4) must remain neutral in union organizing.
  - There are also limits on executive compensation and severance payments.

- **Employee Retention Credit.**

- Eligible employers can receive a tax credit in the amount of 50% of eligible wages (up to \$10,000/quarter) for each employee.
- Employers are eligible if their: (1) operations were suspended due to a Coronavirus-related shutdown order; or (2) gross receipts declined by 50%.

# Federal Leave Legislation

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- **Families First Coronavirus Response Act.**
  - Effective April 1, 2020. Limited stay of enforcement by DOL until April 17.
- **(1) Emergency Paid Sick Leave Act.**
  - Employers with less than 500 employees must provide full-time employees with 80 hours of paid sick leave for certain purposes related to the Coronavirus outbreak.
    - Leave is fully paid, or at a rate of 2/3 of the regular rate, depending on the reason for leave.
- **(2) Emergency Family & Medical Leave Expansion Act.**
  - Employers with less than 500 employees must provide 12 weeks of leave to care for a child whose school/day care is closed due to a public health emergency.
    - First 10 days may be unpaid; after which employees must be paid 2/3 of their regular rate.
- **(3) Tax Credits for Paid Sick and Paid Family and Medical Leave.**
  - CARES Act: Employers will receive a tax credit in advance, rather than be reimbursed.

# Federal Leave Legislation – DOL Regulations

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- The Department of Labor issued temporary regulations on April 1.
- **Documentation necessary for leave:**
  - **Employees:** Must provide: (i) the employee's name; (ii) dates for which leave is requested; (iii) qualifying reason for leave; and (iv) a statement that the employee is unable to work because of the qualified reason for leave.
    - Additional documentation is necessary for four of the six reasons (e.g., an employee subject to a quarantine or isolation order must provide the name of the entity that issued the order).
  - **Employers:**
    - (1) Should retain all documentation provided by employees.
    - (2) May ask employees for additional information that will support the employer's request for tax credits. If an employee fails to comply, the employer is not required to provide leave.

# Federal Leave Legislation – DOL Regulations (cont'd)

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- **Notice of need for leave:**

- Advance notice is not required.
- Employers can only require notice after the first workday the employee takes leave.
- Employers should allow employees who fail to give proper notice an opportunity to provide required documentation before denying the request.

- **Shelter-in-place orders:**

- Employees who are unable to work because they are subject to a federal, state or local quarantine or isolation order may be eligible for leave.
- The regulations broadly define a quarantine or isolation order to include shelter-in-place and stay-at-home orders.
- Leave is not available if the employee is able to work or telework.

# Federal Leave Legislation – DOL Regulations (cont'd)

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- **Seeking medical diagnosis:**
  - If an employee is “seeking a medical diagnosis,” leave is generally not available if the employee is: (1) able to telework, and (2) not experiencing serious COVID-19 symptoms.
- **Effect of leave previously provided voluntarily:**
  - Employers who already offered leave voluntarily must still provide emergency paid sick leave and family medical leave benefits, even to employees who took the employer’s voluntary leave.
  - Employers must pay employees for leave already taken, but they are not required to continue offering the leave.
- **Intermittent leave:** Available if the employer and employee agree.
  - No written agreement is required, but it is advised as a best practice.

# Federal Leave Legislation – DOL Guidance

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- **Determining whether you have fewer than 500 employees:**
  - Determination to be made at the time employee's leave is taken.
  - Employers qualify if they employ fewer than 500 full-time and part-time employees within the U.S. (including D.C. and U.S. territories).
    - Must count employees on leave, temporary employees who are jointly employed (regardless of who maintains their payroll), and day laborers supplied by a temp agency.
    - Includes common employees under the FLSA joint employer test and employees of all entities making up the integrated employer under the FMLA integrated employer test for both EPSLA and EFMLEA.
    - Does not include independent contractors.
  - If you have questions regarding counting employees, consult legal counsel.
- **Employers must post an employee rights notice:**
  - Can mail, email, or post the notice on an employee website.
  - Link to the notice is in the additional resources section.

# New York Leave Legislation

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- Large employers (100+ employees) must provide 14 calendar days of paid leave to employees subject to a quarantine order by a public official.
  - Benefits are paid at the employee’s regular rate.
    - Employees who work a fixed schedule or are paid a salary should receive their normal pay.
    - Part-time employees should be paid for the amount of time that they would have otherwise received pay had the employer’s operations continued in its normal course.
  - Smaller employers must provide a shorter amount of leave.
- Leave is also available for employees to provide care for a child who is subject to an order of quarantine or isolation by the government.
  - Leave is paid at 60% of the employee’s average weekly wage, up to \$840.70 per week.
  - Employees apply for benefits through the employer’s insurance carrier.
    - Employers must complete their portion and return the application within three business days.

# New York Leave Legislation (cont'd)

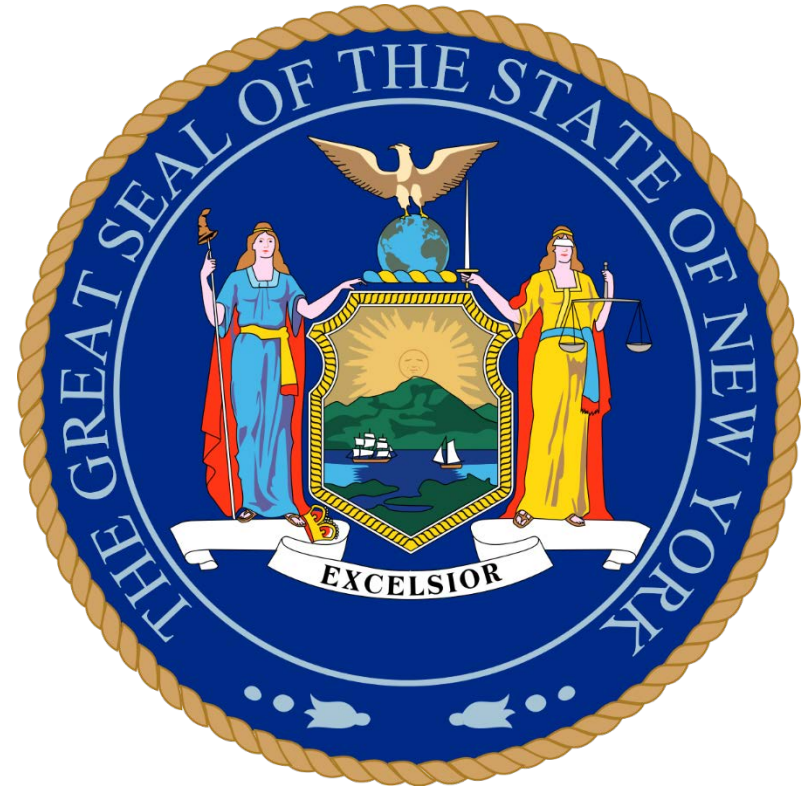
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- Leave is not available to employees:
  - (1) Who are asymptomatic and capable of working;
  - (2) Who voluntarily traveled to a country with level 2 or 3 CDC health notice (if travel was not at direction of employer and employee was provided notice of CDC notice);
  - (3) Who voluntarily quarantine; and
    - Only available when an employee is under a quarantine order issued by the State, NYS Dept. of Health, local Board of Health, or any government entity authorized to issue such order.
  - (4) Of employers that temporarily close or go out of business.
- Payment must be made in the paycheck for the pay period leave is taken.
- Employers are required to provide leave separate from any existing accruals.
- Employees cannot be fired for taking leave.
- Leave is available retroactively for orders issued before the law's passage.

# New York Executive Order

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- Effective March 22, only essential businesses may utilize an in-person workforce.
  - Businesses must utilize teleworking arrangements to the extent possible.
  - Businesses that provide essential services must implement social distancing rules.
- Residential and commercial evictions and foreclosures are suspended for at least 90 days.



# New York Executive Order (cont'd)

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- The following have been deemed “essential businesses” and are not subject to the in-person workforce reduction:
  - **Essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses.**
    - Including security, building cleaners, general maintenance, doorpersons, and disinfection.
  - **Essential and emergency construction.**
    - See next slide.
  - **Essential services.**
    - Including trash and recycling, mail and shipping, and building cleaning and maintenance.
  - **Residential moving services.**
- Others may be deemed essential by requesting an opinion from the State.



# New York Executive Order (cont'd)

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- **Essential and Emergency Construction:**

- NYC DOB has issued a guidance on essential and emergency construction.
  - **Emergency construction**: A project necessary to protect health and safety of the occupants, or to continue a project if it would be unsafe to allow it to remain undone.
    - If additional time is needed to safely secure the site, must request approval from DOB.
  - **Essential construction**: Includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters.
- Can request an “essential or emergency” designation from the DOB.
- At every site, social distancing must be maintained, subject to a \$10,000 fine per violation.
  - Social distancing must be maintained in elevators; and during meals and entry.
- Permits already in effect must be kept active even though work has been suspended.



# RAB/32BJ Agreements

# RAB/32BJ Expanded Use of Part-Time Employees MOA

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- Residential employers may increase work hours for part-time employees for 90 days, paying these employees at least their previous hourly wage rate.
- Employers will not be liable for exceeding time thresholds for contributions to employee benefits funds for these employees who work more than two days per week (for Health, Training and Legal funds) and 20 hours per week (for Pension Fund and Supplemental Retirement and Savings Fund).
- Increased hours to be offered based on department seniority and will not result in the loss of hours or employment for full-time employees.
- Employer must send a notice to the RAB and 32BJ, identifying by name the part-time employees that may be assigned additional work hours.

# RAB/32BJ Better Terms MOA

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- The “Better Term or Condition of Employment” clause in the parties’ CBAs does not apply to any enhanced compensation or benefits provided by the employer from March 6 to 60 days after execution of the MOA (unless extended).
- Enhanced compensation and benefits will not have binding effect on employment or dealings between the RAB and 32BJ.
- The MOA does not lower existing wages or benefits covered by the “Better Term or Condition of Employment” clause implemented before the MOA.
- Employers to promptly provide notice of enhanced compensation or benefits.

# RAB/32BJ Temporary Employees MOA

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- Addresses staffing issues for parties to the Apartment Building Agreement and Resident Managers and Superintendents Agreement.
- Allows covered employers to hire temporary employees.
  - Cannot result in the loss of employment or hours of any regular employee.
  - Former employees of the building with recall rights receive preference, in seniority order.
  - Temporary employees are covered by the 2018 Apartment Building Agreement.
- Employers who seek to hire temporary employees must provide notice to the Union and RAB on the appropriate form.

# RAB/32BJ Scheduling MOA

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- The RAB and 32BJ have entered into an agreement regarding alternative work schedules during the pandemic.
- Full-time employees who regularly work 40 hours may voluntarily modify their work schedule to 3 days/week for a total of 36 hours.
  - Such employees will be paid for 40 hours of work.
  - The Union waives the requirement of overtime pay for working more than 8 hours/day.
    - Employees receive overtime if they work more than 12 hours/day or more than 40 hours/week.
  - There must be a minimum of 12 hours between the end of the shift on one day and the start of the next work day.
- The schedule change agreement must be signed by both the employer and the employee.

# RAB/32BJ Tolling Agreement

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- The time limit for filing a grievance arising under any RAB agreement will be tolled for at least 30 days (unless terminated by either party on seven days' notice).
- Joint Industry Grievance Committee meetings, Step II meetings, and arbitration hearings are postponed for the duration of the tolling agreement.

# RAB/32BJ Paid Leave MOA

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- Employees who are laid off/ineligible for health coverage on or after March 6 will be provided with additional 30 days (for total of 60 days) from the date of their layoff/loss of eligibility.
- Employers will make reasonable efforts to allow employees to use PTO (vacation, sick, personal days, etc.) to cover absences due to pandemic-related reasons.
- There is no reduction in PTO if the employer directs the employee to stay at home and self-quarantine because of Coronavirus exposure in the workplace.
- If an employee self-quarantines for any other reason, the employer may permit the employee to use his/her PTO or statutory paid leave, if available.

## RAB/32BJ Paid Leave MOA (cont'd)

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- For statutory paid leave, the mandatory paid leave provision applicable to the largest covered employer will apply to all employers regardless of their individual size.
- If building operations are suspended/reduced, the following are waived:
  - Advance notice of reduction in force (30 days)
  - Notice of reduction in hours (30 days)
  - Advance notice of schedule change (30 days)
  - Bumping rights suspended (30 days)
  - Termination pay (60 days)
- Employer will attempt to offer displaced employees temporary assignments at other locations without regard to seniority.

# RAB/32BJ Understanding: Payout of 2020 Vacation in the Event of a Layoff

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- Employees laid off as a result of COVID-19 and for which the Union receives notice on or after April 6, may elect to be paid 50% of their 2020 vacation entitlement, up to two weeks.
  - Employees may not be compelled to elect such a payment.
  - Payout of unused sick time is not required.
  - For more prolonged layoffs, the parties will discuss the timing of payment of unused vacation and personal days.
- No employee laid off prior to April 6 shall be compelled to take payment of their accrued vacation or other PTO.
  - However, elections to receive payment made up to this date shall be honored.
- An employee who does not wish to cash out their PTO is not compelled to and is able to discontinue such an election.

# Interaction between Emergency Leave Laws and RAB/32BJ MOA

Employee unable to work due to employee isolation:

Reason	Applicable Leave
<b>Government – Subject to quarantine / isolation order</b>	Federal Paid Sick Leave <sup>1</sup>
	New York Paid Sick Leave
	Thereafter, MOA (pursuant to Paragraph 3)
<b>Medical – Advised to self-quarantine by health care provider</b>	Federal Paid Sick Leave <sup>1</sup>
	MOA (pursuant to Paragraph 3)
<b>Medical – Experiencing symptoms and seeking diagnosis</b>	Federal Paid Sick Leave <sup>1</sup>
	MOA (pursuant to Paragraph 3)
<b>Employer – Directed to self-quarantine due to worksite exposure</b>	MOA (two weeks of PTO without reduction of any existing PTO entitlements pursuant to paragraph 3)

<sup>1</sup> Pay is no less than EE’s regular rate of pay (as defined under FLSA), up to \$511/day and \$5,110 in aggregate.

# Interaction between Emergency Leave Laws and RAB/32BJ MOA


Employee unable to work due to care for another:

Reason	Applicable Leave
Government – Subject to quarantine / isolation order	Federal Paid Sick Leave <sup>2</sup>
	New York Paid Family Leave
	MOA (pursuant to Paragraph 3)
Medical – Advised to self-quarantine by health care provider	Federal Paid Sick Leave <sup>2</sup>
	New York Paid Family Leave (new) <sup>3</sup>
	MOA (pursuant to Paragraph 3)
Medical – Experiencing symptoms & seeking diagnosis	MOA (pursuant to Paragraph 3)
Child Care Provider – Precautionary closure	Federal Paid Sick Leave <sup>2</sup>
	MOA (available pursuant to Paragraph 2)
Child Care Provider – Government has declared public health emergency causing closure	Federal Paid Sick Leave <sup>2</sup>
	Federal Family Medical Leave <sup>4</sup>
	MOA (available PTO pursuant to Paragraph 2)

<sup>2</sup> Pay is no less than 2/3 EE’s regular rate of pay, up to \$200/day and \$2,000 in aggregate.

<sup>3</sup> If the family member has been diagnosed with COVID-19, from 3/27/2020 to 6/25/2020, EE may be eligible for up to 10 weeks of NYPFL (60% of EE’s avg. weekly wage, capped at \$840.70).

<sup>4</sup> 2/3 pay benefit is capped at \$200/day and \$10,000 in aggregate.



# Common Questions Regarding Coronavirus and the Building Workplace

# Does Leave “Stack” under Federal Law, State Law, and CBAs?

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- **CBA Leave and Statutory Leave:** CBA leave is generally independent of leave available under federal and state law.
  - Employers are required to provide NY Emergency Leave separate from existing accruals.
  - Federal Emergency Paid Sick Leave is in addition to other leave entitlements.
  - Employees may elect to use existing leave entitlements concurrently with Emergency Family and Medical Leave.
    - There is contradictory guidance as to whether an employer can require employees to use leave concurrently. Employers should not require this until the issue is resolved.
- **Federal Leave and New York State Leave.**
  - Employees in New York are eligible to receive the difference between what the federal legislation provides and what is available under the state law.
  - However, the only overlapping reason for leave is: The employee is subject to a federal, state, or local quarantine order by an official.



# Are My Employees Eligible for Unemployment?

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- **New Yorkers are eligible for unemployment insurance if they:**
  - (1) Demonstrate recent substantial attachment to the labor market;
  - (2) Have received sufficient wages from a covered employer for a sufficient period of time;
  - (3) Are out of work through no fault of their own;
  - (4) Are ready, willing, and able to work; and
  - (5) Are actively seeking employment.
- **The CARES Act:**
  - Expands unemployment insurance to provide payments to those who either:
    - Are self-employed, seeking part-time work, or don't have sufficient work history; or
    - Are unable to work because of the Coronavirus (e.g., diagnosis, caregiver responsibilities, under quarantine, etc.).
  - Those who: (1) have the ability to telework, or (2) are receiving paid leave, are not eligible.

## Are My Employees Eligible for Unemployment? (cont'd)

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- Qualifying individuals are eligible for benefits for 26 weeks in New York.
  - Under the CARES Act, benefits are available for an additional 13 weeks (39 weeks total) through December 31, 2020.
- New York is waiving the 7-day waiting period for those out of work for Coronavirus-related reasons.
- New Yorkers are eligible for \$504/week in benefits.
  - The CARES Act provides an additional \$600/week from April 5 through July 31, 2020 in addition to the \$504 maximum provided under New York State law.
- Under the CARES Act, states must provide flexibility for those who cannot meet the work search requirement due to Coronavirus (e.g., illness, quarantine, movement restriction).

# Are My Employees Eligible for Unemployment? (cont'd)

- Unemployment Insurance Scenarios:

Scenario	Eligibility
1. Employee on PTO	Generally not eligible (employee is already being paid)
2. Employee on unpaid leave of absence	May be eligible, if conditions on prior slide are met (e.g., out of work due to no fault of own)
3. Employee with reduced work hours	May be eligible if: (1) employee works no more than 3 days/week (regardless of the number of hours) and (2) employee earns no more than the maximum benefit amount (\$504 in NY)
4. Employees with alternating work schedules (e.g., one week on, one week off)	May be eligible during off-week, particularly because the waiting period has been waived in NY

# What If an Employee Is Exposed *in the Workplace*?

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- In addition to the usual exposure considerations (e.g., closing, cleaning)...
- **Federal OSHA Requirements:**
  - Coronavirus is recordable (in a form 300 log) when an employee is infected in the workplace.
  - Coronavirus is reportable when an employee is infected in the workplace.
    - If the employee is hospitalized, a report must be made within 24 hours.
    - If an employee dies, a report must be made within eight hours.
- **Worker's Compensation:**
  - Employees that contract Coronavirus in the workplace may be entitled to worker's comp.
  - Employees receive 2/3 of their average weekly rate in benefits (maximum: \$934.11/week).
- **Key Question:** Whether the employee was infected in the workplace.
  - At least for worker's comp, this is being determined on a case-by-case basis.
  - Considerations: (1) the industry and job (e.g., whether the employee has contact with the public), (2) number of other cases in the workforce, (3) presence of community spread.

# What Confidentiality Rules Apply to *Employee Exposure*?

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- If an employee tests positive, you may wish to notify: (1) other employees; (2) tenants, and (3) the local health department
- When communicating with any of these parties, be aware that the ADA protects employee health information.
  - If you wish to reveal the employee's name, they should be asked to sign a release form.
  - Without a signed release, the ADA prohibits disclosure of the employee's name.
    - The EEOC recently reiterated in a webinar that these requirements apply in full force, even if other parties demand more information.
  - As an alternative, provide enough information to allow the recipient to determine the risk of exposure (e.g., areas in which the employee worked, days the employee was at work).
- **Note:** Most employers are not governed by HIPAA.
  - It applies to entities such as medical providers and employer-sponsored health plans.

# Can Employees Refuse To Work Because They Are Worried About Harm to Themselves or Their Families?

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- Generally, employers set the terms and conditions of employment, and can require employees to work, so long as the workplace is reasonably safe.
- However, there are limited circumstances where employees may refuse:
  - **ADA:** Employees with a qualifying disability may request reasonable accommodations.
    - Employers do not have to provide accommodations to employees who live with someone at a greater risk of COVID-19 complications.
  - **OSHA:** In limited situations, employees may refuse work if they believe that they will be exposed to an imminent risk of death or serious injury, and the employer failed to eliminate the danger.
    - Provide PPE and implement social distancing measures to reduce risk of death or injury.
  - **NLRA:** Consider if group activity constitutes “protected concerted activity.”
- Always consider the employee relations perspective.

# What Are the Best Practices for Residential and Commercial Buildings?

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- Frequently disinfect work areas, door handles, railings, etc.
- Provide PPE (e.g., face masks, gloves) as recommended by health authorities.
- Reduce staff density where possible.
  - Consider adjusting schedules to avoid overlap.
  - Be sure to seek appropriate approval.
- Consider covering staff transportation/parking costs to reduce reliance on public transportation.
- To the extent possible, close common areas to avoid gatherings of staff and residents.



# What Are the Best Practices for Residential and Commercial Buildings? (cont'd)

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- Maintain social distancing.
  - Place a marker where residents/visitors should stand while interacting with employees.
  - Consider using door stoppers (weather permitting), or having residents open doors.
  - Restrict the number of people on elevators (e.g., one household).
  - Develop protocols for package pick-up that maintains social distancing.
  - For food deliveries, ask residents to retrieve deliveries from the lobby.
    - The delivery person should leave the delivery at least six feet from staff.
- Limit repairs in residences to emergencies only. If repairs are necessary:
  - (1) Before entering, confirm that the tenant is not sick. Reschedule if possible.
  - (2) Maintain social distancing (require residents to remain in another room).
  - (3) Provide maintenance staff with appropriate PPE and require hand washing.

# What Are the Best Practices for Residential and Commercial Buildings? (cont'd)

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- Encourage residents to postpone moves, if possible. If a move is necessary:
  - (1) Ensure moves adhere to social distancing requirements.
  - (2) Before and after the move, clean hallways, stairways, etc.
  - (3) Require that movers use PPE and frequently wash hands.
  - (4) Consider authorizing moves during off hours.
- Most residential and commercial buildings are not required to notify the health department if someone in the building tests positive.
  - However, you may want to contact them for help coordinating a response.
- If there is a fire alarm or other emergency, occupants should follow standard protocols, but maintain social distancing to the extent possible.

# What If I Need to Furlough Employees?

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If you are conducting a furlough, you should consult legal counsel to discuss:

- Negotiation with union and CBA provisions.
- Notice requirements and employee communications.
- WARN law implications:
  - Require advance notice to employees (and/or unions) and various government officials in the event of a plant closing or mass layoff affecting requisite number of employees.
  - Federal and state requirements differ with respect to employer coverage, employee thresholds, required notice, etc.
  - Some exceptions allow for untimely notice:
    - Unforeseeable Business Circumstances Exception.
    - Faltering Company Exception.

# What If I Need to Furlough Employees? (cont'd)

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- EEO implications:
  - Documentation of decisions and selection criteria.
  - Adverse impact analysis.
- Practical considerations:
  - Return of property.
  - Managing employee exits.
- Benefits and pay issues:
  - Final wage payments (including vacation and other accrued benefits).
  - Coordinate furloughs with employee benefit plans (e.g., medical insurance, 401(k) plans).
- *Note:* Furloughed employees will likely be eligible for unemployment insurance, but not emergency federal/state leave.



# Additional Resources

# Proskauer's Resources

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- **Coronavirus Resource Center**

- <https://www.proskauer.com/market-solutions/coronavirus-covid-19-resource-center>

- **Law and the Workplace Blog**

- <https://www.lawandtheworkplace.com/>

- Recent Coronavirus blog topics include:

- Federal Coronavirus Aid, Relief and Economic Security (CARES) Act Signed into Law

- Federal Family First Coronavirus Response Act Signed Into Law

- New York State Issues Guidance on COVID-19 Quarantine Leave Law

- New York State Mandates Non-Essential Workers Must Stay Home

- EEOC Answers Employers COVID-19 Related Questions

# RAB, REBNY, and BOMA Resources

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- **RAB Document Center** – <https://www.rabolr.com/documents>
  - Each of the 32BJ/Union Agreements
  - Essential Business Identification Form Letter for Employees
  - List of Janitorial Contractors
  - Other COVID-19 Guidance
- **REBNY Resource Hub** – <https://rebny.com/content/rebny/en/Coronavirus.html>
  - Federal Stimulus Resources
  - Real Estate Industry Resources
  - Other Government Resources
- **BOMA NY Website** – <http://www.bomany.org/home/>

# Additional Resources

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- Centers for Disease Control and Prevention
  - <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
  - <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>
  - [https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fguidance-business-response.html](https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fguidance-business-response.html)
- Occupational Safety and Health Administration
  - [https://www.osha.gov/SLTC/novel\\_coronavirus/standards.html](https://www.osha.gov/SLTC/novel_coronavirus/standards.html)
  - <https://www.osha.gov/Publications/OSHA3990.pdf>
- Equal Employment Opportunity Commission
  - [https://www.eeoc.gov/facts/pandemic\\_flu.html](https://www.eeoc.gov/facts/pandemic_flu.html)
- Department of Labor: Wage and Hour Division
  - <https://www.dol.gov/agencies/whd/pandemic>
  - <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
  - [https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

# Additional Resources (cont'd)

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- New York State Department of Health

- <https://www.health.ny.gov/diseases/communicable/coronavirus/>
- [https://coronavirus.health.ny.gov/system/files/documents/2020/03/doh\\_eoguidancegatheringspacesbusiness\\_031920.pdf](https://coronavirus.health.ny.gov/system/files/documents/2020/03/doh_eoguidancegatheringspacesbusiness_031920.pdf)
- <https://esd.ny.gov/novel-coronavirus-faq-businesses>
- <https://coronavirus.health.ny.gov/new-york-state-pause>

- Other New York State Guidance

- <https://esd.ny.gov/guidance-executive-order-2026>
- <https://paidfamilyleave.ny.gov/new-york-paid-family-leave-covid-19-faqs>

# Additional Resources (cont'd)

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- New York City Health Department

- <https://www1.nyc.gov/site/doh/health/health-topics/coronavirus.page>
- <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/novel-coronavirus-faq-for-businesses.pdf>
- <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/disinfection-guidance-for-businesses-covid19.pdf>
- <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-residential-buildings-faq.pdf>

- New York City Department of Buildings

- [https://www1.nyc.gov/assets/buildings/pdf/covid-19\\_construction\\_faqs.pdf](https://www1.nyc.gov/assets/buildings/pdf/covid-19_construction_faqs.pdf)
- [https://www1.nyc.gov/assets/buildings/pdf/essential\\_vs\\_non-essential.pdf](https://www1.nyc.gov/assets/buildings/pdf/essential_vs_non-essential.pdf)



# Future Webinars

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- **Overview of Relevant CARES Act Provisions.**
  - **Date and Time:** Wednesday, April 8 @ 3:00 PM.
  - **Registration:** All participants in today's webinar will receive registration information in a follow-up email.
  - Co-hosted by REBNY and Proskauer.
- **Building Workplace Webinar #6.**
  - **Tentative Date and Time:** Tuesday, April 21 @ 1:30 PM
    - No webinar next week, pending further developments.
  - **Registration:** Information forthcoming.

# Questions?

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Proskauer >>



# Coronavirus and the Building Workplace: *Are You Prepared? Part 5*

Tuesday, April 7, 2020

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**BOMA**  
New York

**REBNY**<sup>®</sup>

**RAB**  
REALTY ADVISORY BOARD  
ON LABOR RELATIONS

**MEMORANDUM OF AGREEMENT**  
**ON EXPANDED USE OF PART-TIME EMPLOYEES UNDER**  
**THE APARTMENT BUILDING AGREEMENT**

Whereas, SEIU Local 32BJ (“Union”) and the Realty Advisory Board on Labor Relations Inc. (“RAB”) on behalf of its members (“Employers”) are parties to the 2018 Apartment Building Agreement and the 2018 Resident Managers and Superintendents Agreement;

Whereas, the COVID-19 pandemic is impacting the building operations and building service workers throughout the City of New York;

Whereas, the parties desire to maintain stable labor relations during the COVID-19 pandemic, ensure an effective response to the public health crisis, maintain the provision of safe essential services, minimize dislocation and mitigate the impacts on employees;

Whereas, certain residential building owners and managers are seeking to increase hours of current part-time employees in response to the COVID-19 public health emergency to support existing full-time building staff to cover for anticipated high volume and extended employee absences and for enhanced cleaning and disinfecting services for the health and safety of tenants and employees (“Part-Time Employees”);

Now, therefore, the RAB, on behalf of its members, and the Union agree to the following (“this Agreement”):

1. Employers may increase work hours for Part-Time Employees under the 2018 2018 Apartment Building Agreement under the following terms:
  - a. Part-Time Employees working increased hours under this Agreement shall not suffer any reduction of their previous hourly wage rate and shall continue to be covered under the 2018 Apartment Building Agreement except as specifically modified under this Agreement.
  - b. Employers shall not be liable under Article X, Sections A through E for Part-Time Employees who exceed the time thresholds that require Employer contributions to employee benefit funds for employees who work more than 2 days per week for the Health, Training and Legal Funds and 20 hours per week for Pension and Supplemental Retirement and Savings Funds during the duration of this Agreement due to increased work hours for Part-Time Employees under this Agreement. The Union acknowledges that Part-Time Employees who exceed these time thresholds for Employer contributions to the benefits funds are not eligible to receive those benefits during the duration of this Agreement.
  - c. Part-Time employees shall be offered additional work hours based on department seniority.
  - d. No increased work hours for Part-Time Employees shall result in the loss of employment or hours of work of any regular full-time employees. No regular full-time employee at any building may be laid-off while any Part-Time Employees are working increased work hours under this Agreement.

e. In the event an Employer seeks to increase work hours for its current Part-Time Employees under the terms of this Agreement, the Employer shall complete and transmit to the Union and the RAB a copy of the form, annexed as Exhibit A, identifying affected Part-Time Employees.

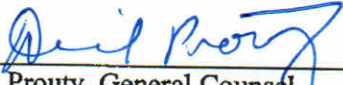
2. The parties agree that this Agreement will remain in full force and effect from the date it is fully executed for a period of ninety (90) days, subject to termination or extension by mutual written agreement.

3. The Union may offer the same terms for the use of Part-Time Employees under this Agreement to independent residential employers in New York City and will transmit a copy of a comparable form as Appendix A completed by such independent employer to the RAB.

4. The parties further agree that any dispute as to the terms and conditions of employment for Part-Time Employees or other disputes arising out of the implementation of this Agreement will be subject to the grievance and arbitration procedures of the applicable collective bargaining agreement for the relevant building as the sole and exclusive forum for the resolution of such dispute.

SERVICE EMPLOYEES  
INTERNATIONAL UNION, LOCAL 32BJ

REALTY ADVISORY BOARD ON LABOR  
RELATIONS, INC.

By:   
David Prouty, General Counsel

By:   
Howard Rothschild, President

Date: 4-2-2020

Date: APRIL 1, 2020

**EXHIBIT A**

**Notice of Increased Hours for Part-Time Employees Due to Impact of COVID-19**

To: SEIU Local 32BJ:  
Kevin Stavris            [kstavris@seiu32bj.org](mailto:kstavris@seiu32bj.org)  
cc: Mateo Daija         [mdaija@seiu32bj.org](mailto:mdaija@seiu32bj.org)

Realty Advisory Board on Labor Relations, Inc.:

The residential building owner or manager identified below ("the Employer") is currently a party to the 2018 Apartment Building Agreement between the Realty Advisory Board on Labor Relations, Inc. ("RAB") and SEIU Local 32BJ ("the Union"). Pursuant to a supplemental agreement reached in March 2020 between the Union and RAB ("this Agreement"), the Employer hereby provides notice that it intends to increase work hours of certain current part-time employees ("Part-Time Employees") for the performance of bargaining unit work at the property identified below ("the Building") due to the public health emergency caused by the COVID-19 pandemic.

The terms of the Agreement for increased hours of Part-Time Employees at the Building shall expire upon ninety (90) days from the date this form is completed by the Employer.

**The Employer must identify the Part-Time Employees who the Employer intends to assign increased work hours under the terms of this Agreement on the attached sheet. Attach additional sheets as needed.**

I, as the undersigned representative of the Employer, have read and hereby agree to all the terms of this Agreement reached between the Union and RAB concerning the increased hours for Part-Time Employees.

\_\_\_\_\_  
Building Name and Address

\_\_\_\_\_  
Number of Part-Time Employees

\_\_\_\_\_  
Employer Representative Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Representative Printed Name and Title

\_\_\_\_\_  
Employer Corporate Name (if applicable)



## MEMORANDUM OF AGREEMENT

Whereas, SEIU Local 32BJ (“Union”) and the Realty Advisory Board on Labor Relations Inc. (“RAB”) on behalf of its members (“Employers”) are parties to the 2020 RAB Commercial Building Agreement, the 2020 RAB Contractors Agreement, the 2018 Apartment Building Agreement, the 2018 Resident Managers and Superintendents Agreement, the 2018 Long Island Apartment Building Agreement, the 2016 RAB Security Officers Agreement, and the 2016 RAB Window Cleaners Agreement (collectively the “Agreements”);

Whereas, the COVID-19 pandemic is impacting the building operations and building service workers throughout the City of New York;

Whereas, the parties desire to maintain stable labor relations during the COVID-19 pandemic, ensure an effective response to the public health crisis and the provision of essential services, minimize dislocation and mitigate the impacts on employees;

Whereas, certain buildings are experiencing difficulties in continued operations as a result of COVID-19 and these buildings may wish to offer enhanced compensation or benefits to covered employees;

Now therefore, the RAB, on behalf of its members, and the Union agree to the following:

1. The binding effect of the “Better Term or Condition of Employment” clause of the 2018 Apartment Building Agreement (Article III, Section 3), the 2020 Commercial Building Agreement (Article III, Section 2), and the 2020 Contractors’ Agreement (Article XVI, Section 1, 2<sup>nd</sup> Paragraph), and any other comparable or similar clause of any RAB industry-wide agreement with Local 32BJ (collectively, “BTC Clauses”), is inapplicable to any newly introduced enhanced compensation or benefit, implemented on or after March 6, 2020, and through and including the period ending 60 days from the date this Memorandum of Agreement is fully executed by the parties. The duration of this Memorandum of Agreement may be extended by mutual written consent of the Union and the RAB.

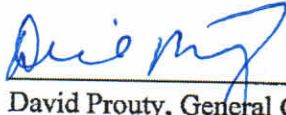
2. During the time this Memorandum of Agreement is in full force and effect, RAB member employers and contractors may provide enhanced compensation and benefits to incentivize employees in covered employment under the Agreements without creating a binding better term or condition of employment, or as applicable, a practice or course of dealing between the parties.

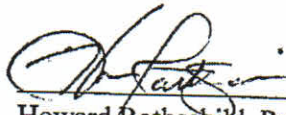
3. No provision of this Memorandum of Agreement may be construed so as to lower an existing wage or benefit covered by the BTC Clauses implemented prior to the date this Agreement is fully executed by the parties.

4. Employers will use their best efforts to provide reasonably prompt notice of the enhancement of compensation or benefits covered by this Memorandum of Agreement to the Union and to the RAB.

SEIU LOCAL 32BJ

REALTY ADVISORY BOARD ON  
LABOR RELATIONS INC.

By:   
David Prouty, General Counsel

By:   
Howard Rothschild, President

Date: 4-2-2020

Date: March 31, 2020